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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/638,096	08/07/2003	Levik Kodaverdian	Bona US 4 CVL	3381

7590 06/18/2007
KLAAS, LAW, O'MEARA & MALKIN, P.C.
1999 Broadway, Suite 2225
Denver, CO 80202

EXAMINER

SHAKERI, HADI

ART UNIT	PAPER NUMBER
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3723

MAIL DATE	DELIVERY MODE
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06/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/638,096
Filing Date: August 07, 2003
Appellant(s): KODAVERDIAN ET AL.

MAILED

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Group 3700

Robert W. Nelson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 22, 2007 appealing from the Office action mailed October 23, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,870,791	GURSTEIN ET AL	02-1999
6,935,939	BUSER ET AL	08-2005
6,447,383	ODA ET AL	09-2002

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5,392,568 HOWARD JR ET AL 02-1995

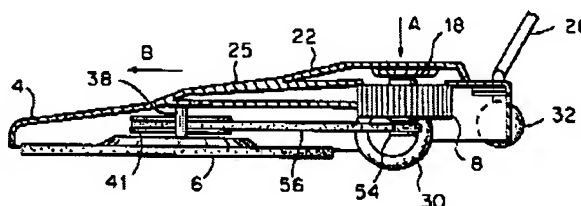
6,540,598 MCCUTCHEN 04-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 4-9, 11, 13, 15-17, 20-24, 26, 28, 30, and 33-35 stand rejected under 35 U.S.C. 102(b) as being anticipated by Gurstein et al. (5,870,791).

Gurstein et al. discloses all of the limitations of claims, 1 and 17, i.e., a floor edger comprising a first housing (defined by shroud 4, deck 14 and cover 22) including a first opening and a rotatable abrasive disc (6) located in said opening; a second opening (16 on either side of the bar defining 17 and thru 15); a third opening (24); said rotatable abrasive disc having a diameter greater than six inches; and a motor (8) operatively connected to said first housing and drivingly connected to said abrasive disc located at least partially in a second opening; a motor controller (25) as discloses in col. 6, lines 33-47, wherein a fan (18) drivingly connected to the motor and located in the first housing on the shaft (20) between motor (8) and the pulley (54) (05:65-67) and wherein an air path is defined between the port and the first opening through the fan (05: 50-58). Regarding claims 4-8 and 20-23, Gurstein et al. meets the limitations, e.g., col. 3, line 46 (US 5,004,944); 2.5 hp. Regarding claims 9, 11, 13, 15-16 and 24, 26, 28, 30, and 33-35, Gurstein et al. meets the limitations, e.g., second housing frame (3).



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Claims 12 and 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gurstein et al. in view of anyone of Buser et al. (6,935,939), Oda et al. (6,447,383) or Howard, Jr. et al. (5,392,568).

Gurstein et al. as applied above meets all of the limitations above, except for disclosing a vacuum device attachable to the third opening. Vacuum ports to withdraw dust and debris are known in the art as evident by prior art cited above. Buser et al. discloses that using a cooling fan for withdrawing dust and debris is old and known in the art, but having limited utility. Howard, Jr. et al., discloses using a cooling fan for withdrawing dust and debris. Oda et al. teaches providing another fan for withdrawing dust and debris. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the invention of Gurstein et al. with vacuum device as taught by anyone of Buser et al., Oda et al., or Howard, Jr. et al. to collect the generated dust and debris. Note that modification per Buser et al. may not be the preferred embodiment as taught by the teaching reference, but just modifying the cooling fan by reversing the flow (and collecting or guiding the dust, e.g., via a hose), as simple, fast and inexpensive means of providing a dust collector for the device is considered well within the knowledge of one of ordinary skill in the art.

Claims 2, 3, 18, and 19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gurstein et al. in view of McCutchen (6,540,598).

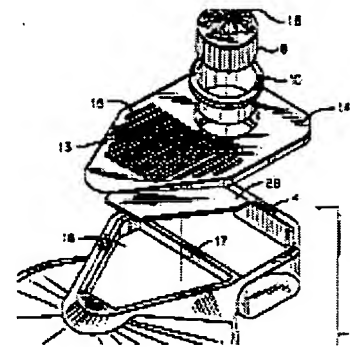
Gurstein et al. as described meets all the limitations of the above claims, except for the specific size of the disc, and weight of the edger. The edger as disclosed by Gurstein is dimensioned and proportionally sized for a disc having 20" diameter,

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therefore modifying or proportionally downsizing the edger for a disc of about 7", a common commercially available size as evident by or in view of McCutchen (col. 3, line 46), depending on the workpiece and or operational parameters, e.g., grinding small or hard to reach areas, a modification well within the knowledge of one of ordinary skill in the art, would reduce the weight if not three times smaller, sufficiently lighter to meet the limitations as recited. Regarding claims 2, 3, 18 and 19, Gurstein modified in view of McCutchen, i.e., for use with a smaller pad, e.g., 7" depending on workpiece and/or operational parameters meets the limitations; since pads having 6 to 8 inch diameters are common in the art.

(10) Response to Argument

Appellant argues against the anticipation rejection over Gurstein et al that the air path as disclosed by Fig. 4, does not extend into the first opening containing the disk 6, and that if air path extended to this opening then it would be blowing dust and debris into the motor. Appellant supports this position by stating that the fan 18 associated with the air path in Fig. 4 is used for cooling the motor thus it uses clean air otherwise the dust would have clogged the motor. This argument is not relevant. The article claimed, a floor edger is patentably distinct from prior art by the structures and structural relationships recited, whether it is in operation or not. The article as in claims 1 and 17 is recited to "comprise" an "an air path extending between said first opening and said third opening by way of said fan". Any compartments in an article not hermetically sealed "comprises" an air path to the others. The article of



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Gurstein et al as shown here and as disclosed in Fig. 4, includes an open air passage between the openings defining first and third (opening containing disk 6 and 24).

Whether during "operation" clean air is caused to flow between the first and the second openings to cool the motor or not, is irrelevant. Appellant is reading more into the claims than what is recited. Claims 1 and 17 recite for an air path between the first and the third openings, which is met by the device as disclosed by Gurstein et al. The recitation "by the way of the fan" is also met by the device of Gurstein et al at least when it is not operating since the fan is physically located between the openings. It is further noted even when the device is operating "an air path" exists between the first opening and the third opening, which inherently is "by the way of the fan", i.e., the fan being between the openings, and although the air may be caused to flow out of the second opening, there is still a path between the openings and if a stronger suction than the cooling air were to be applied to either first opening or third opening, it would draw air from the other opening. It is respectfully noted that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore the arguments regarding how the prior art device operates does not exclude the device from reading over the claims as recited.

With regards to claims 15 and 30, Appellants argue that the handle (26) is connected to the first housing and not a second housing since frame (3) is part of shroud (4). Claim 15 depends on claim 1, and similarly claim 30 depends on claim 17, the parent claims recite for a first housing, and then the dependent claims recite for a

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handle attached to a second housing. Gurstein et al clearly discloses a first housing (shroud 4) and a second housing (frame 3) having a handle (26) attached thereto. The statement by the Appellant that handle (26) is attached to the housing (4) is in error, since Gurstein et al discloses, e.g., in column 7, lines 35-37 a mechanism provided to permit the locking/release of the handle (26) on the frame 3. Frame 3 is a different part of the device than shroud 4 and is referred to by a different reference character. There are no limitations recited in the claims to exclude the broad definition of "housing" from being met by the frame (3) or posts 68 of frame (3). The fact that the frame and the shroud are assembled together should not exclude the reference from reading on the claims.

Appellants do not provide arguments for allowance of other claims other than their dependency on claims 1 and 17.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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